



In the Matter of the Appeal)
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 of)
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 KUNG HO COMPANY, INC.)

Appearances:

For Appellant: Franklin B. Worley, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel
Crawford H. Thomas, Associate
Tax Counsel

OPINION

This appeal is made pursuant to Section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Kung Wo Company, Inc. to proposed assessments of additional tax in the amounts of \$263.66 for each of the income years 1944, 1945 and 1946, and \$409.90 for the income year 1947. Appellant does not appeal from all of the adjustments made to net income for the year 1947.

Appellant, a California corporation engaging in the hotel and investment business, erected a building in San Francisco in 1913 at a reported cost of \$27,729.90. It claimed depreciation on this building based on a 25 year life at 4 percent per annum which amounted to \$1,109.20 per year. In 1924 Appellant purchased the adjoining property for \$108,500 and remodeled the building thereon at a cost of \$80,900.92. In this remodeling, the first and second building were joined into one structure. At the end of 1923 a total of \$8,440 had been taken as depreciation on the first building. Appellant added the original cost of the building acquired in 1913, the cost of the property acquired in 1924 and cost of the remodeling, aggregating \$217,130.82, which it erroneously computed as totalling \$217,550.92. Based on a 25 year life it claimed depreciation at 4 percent per annum on this sum, amounting to \$8,702.03 each year beginning in 1925. For 1924 Appellant

claimed depreciation of \$1,109.20 on the first building and \$2,925 on the second building. In its returns filed after acquisition of the second building Appellant erroneously stated that both properties had been acquired in 1913.

In May, 1948, the Franchise Tax Commissioner issued notices of proposed assessments of additional tax against Appellant for the income years 1944, 1945 and 1946. These notices disallowed the entire deduction for depreciation claimed in the returns for those years. Appellant protested the proposed assessments and at the hearing upon the protests it represented that the returns were merely erroneous in stating that the buildings were acquired in 1913, when the major portion had in fact been acquired in 1924. After the hearing the notices were withdrawn or revised to allow the depreciation claimed.

Following an audit of Appellant's returns by the Bureau of Internal Revenue the Bureau reduced the depreciation allowable to the sum of \$947.45 for each of the years involved herein. On October 26, 1950, which was within the statutory period, the Franchise Tax Board, on the basis of the action by the federal government, then reduced the depreciation allowable to Appellant for each of those years to the same amount as that allowed by the federal government and issued the proposed assessments which are the subject of this appeal.

The first issue for our consideration is whether, as contended by Appellant, the Franchise Tax Commissioner's issuance in 1948 and subsequent withdrawal of the proposed assessments against Appellant for the *income* years 1944 to 1946, inclusive, precluded the Franchise Tax Board from issuing proposed assessments in 1950 (within the statutory period) involving Appellant's tax liability for the same income years.

A portion of Section 25 of the Bank and Corporation Franchise Tax Act (now Section 25662 of the Revenue and Taxation Code) was amended in 1943 to read:

"As soon as practicable after the return is filed, the commissioner shall examine it and shall determine the correct amount of the tax. If the commissioner determines that the tax disclosed by the original return is less than the tax disclosed by his examination he shall mail notice or notices to the taxpayer at its post-office address (which must appear on its return) of the additional tax proposed

to be assessed against it. Such Each notice shall set forth the details of the proposed additional assessment and of computing said tax." (Stats; 1943, p. 203; underlined words were added and crossed-out words were deleted by the amendment.)

The Bank and Corporation Franchise Tax Act (now Part 11 of the Revenue and Taxation Code) did not expressly prohibit the making of two deficiency assessments against a taxpayer for the same taxable year. The only apparent reason for the 1943 amendment to the portion of Section 25 above quoted was to remove any doubt which might otherwise be thought to exist as to the authority of the Commissioner to do so. Accordingly, we conclude that the Section, as amended in 1943, expressly authorized the issuing of a second proposed assessment against Appellant for each of the income years 1944, 1945 and 1946. See Appeal of Louis Hozz and Ettie Hozz, decided by this Board 3-30-44, involving a similar amendment in 1941 to Section 19 of the Personal Income Tax Act.

The second issue in this appeal is whether the Franchise Tax Board ^{acted} properly in disallowing a portion of the deduction for depreciation claimed by Appellant for each of the years involved herein. Appellant concedes that land is a nondepreciable asset and that the cost of the land acquired in 1924 was erroneously included in the basis for depreciation. It contends, however, that the Franchise Tax Board's computation of the cost of the land by allocating the cost of the property to land and buildings according to the same proportions as shown on the City and County of San Francisco Assessor's Records in 1923 does not give the correct cost of the land.

The records of the Assessor's Office of the City and County of San Francisco show that the assessed valuation as of the first Monday in March, 1923, of the property acquired by Appellant in 1924 was \$54,200 of which \$28,700 (52.95 percent of the total) was for the land and \$25,500 (47.05 percent of the total) was for the building. Using the same proportions as the assessed valuation the Franchise Tax Board computed the cost of the land as being 52.95 percent of \$108,500 (the cost of both land and building) or \$57,450.75. Appellant presented no evidence in support of its contention that this method of determining the cost of the land was incorrect, nor evidence showing any other amount to be the cost thereof. Inasmuch as the Assessor's Records are apparently the only evidence now available of the relative value of the land and the building we believe

the above-described method of computation of the cost of the land is reasonable and proper,,

Appellant also contends that since 1924 it has expended approximately \$25,000 for a marquee and a heating system which should have been, but was not added to the cost basis of the building for the purpose of depreciation and that we should increase the depreciation basis by this amount. Appellant did not present this information in any of its returns and has offered no evidence to substantiate its assertions in regard to these improvements or the specific cost thereof. Appellant has the burden of establishing by clear and convincing evidence that the depreciation basis of the property should be increased. We do not believe it has done so.

After eliminating the cost of the land acquired in 1924 the aggregate cost basis of the two buildings was \$159,680.07. By the end of the year 1941 the Appellant had taken depreciation on the two buildings in excess of that amount. The Appellant, accordingly, cannot complain of the disallowance by the Franchise Tax Board of a part of the claimed depreciation on the buildings for the years 1944, 1945, 1946 and 1947.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of Kung biro Company, Inc. to proposed assessments of additional tax in the amounts of \$263.66 for each of the income years 1944, 1945 and 1946, and \$409.90 for the income year 1947 be and the same is hereby sustained.

Done at Los Angeles, California, this 5th day of May,
1953, by the State Board of Equalization.

Wm. G. Bonelli, Chairman

J. H. Quinn, Member

Paul R. Leake, Member

_____, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary